

CW 14-2186

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

AMON, CH.J.

Harold Spencer,

ORENSTEIN, M.J.

Plaintiff,

COMPLAINT

(Jury Trial Demanded)

-against-

CV-14-

THE CITY OF NEW YORK, John Doe #1
and John Doe#2 and John Doe #3

Defendant's

Plaintiff Harold Spencer, by his attorney Laurence
L. Rothstein, for his complaint, alleges as follows:

INTRODUCTION

1. Harold Spencer brings this action pursuant to, among other things, 42 U.S.C. § 1983, 42 U.S.C. 2000aa, and the 4th and 14th Amendments to the United States Constitution, to redress the deprivation of his constitutional and statutory rights. More specifically, on January 9th 2013, at 293 Halsey Street, Brooklyn NY, the Plaintiff was the victim of a home invasion by uniformed members of the New York City Police Department (NYPD).

293 Halsey Street, Brooklyn NY is the private home of Harold Spencer. It is not open to the public, and at

the time of entry by the defendant's, this residential property had a locked front door designed to prevent entry by uninvited third parties. At no time were any of the defendants present within the premises by permission or authority of the owner.

The names of the individual officers are at present unknown. They are referred to as John Doe#1, John Doe#2 and John Doe#3. These officers, acting on behalf of and under the supervision of the NYPD, violated the right of the Plaintiff to be safe and secure in his home from unwarranted searches and seizures, and from the willful and unnecessary destruction of his personal property. The NYPD is alleged to be an agency under the control of Defendant City of New York. These acts are alleged to have been pursuant to the policy and custom of the NYPD. While in violation of the laws of the United States of America, and the State of New York, this policy is done both by design and a lack of proper training and supervision by and to the NYPD. Defendant City of New York is alleged to be aware of the pattern of the unconstitutional nature of such acts, and chooses to ignore such behavior and fail to discipline

it's employees for such acts.

JURISDICTION AND VENUE

2. Pursuant to 28 U.S.C. §§ 1331 and 1343, jurisdiction is proper as Harold Spencer's claims arise under federal law. Pursuant to 28 U.S.C. § 1367, jurisdiction is proper as to the claims of Harold Spencer arising under the common law of the State of New York.

3. Pursuant to 28 U.S.C. § 1391 the command of these officers is a unit of the New York City Police Department, and venue is proper as the acts complained of occurred in the State of New York, County of Kings.

4. This action is brought pursuant to the 4th and 14th Amendments to the United States Constitution as well as 42 U.S.C. § 1983 and 42 U.S.C. 2000aa.

PARTIES

5. Harold Spencer is a citizen of the United States. He resides in the State of New York, County of Kings.

6. At all times relevant herein, Harold Spencer is a natural person residing in the County of Kings. Prior to and on April 9th 2013, John Doe#1 and John Doe#2 and John Doe#3, on information and belief, were Police Officers

employed by the defendant City of New York.

7. Officer John Doe#1 was at all times relevant herein, a member of and employed by the NYPD. Upon information and belief, at all times relevant herein, he was assigned to a unit of the New York City Police Department.

8. Upon information and belief, Officer John Doe#1, is still a member of and employed by the NYPD. At all times relevant herein, he was acting within the scope of his employment and under color of law.

9. Officer John Doe #2 was at all times relevant herein, a member of and employed by the NYPD. Upon information and belief, at all times relevant herein, he was assigned to a unit of the New York City Police Department.

10. Upon information and belief, Officer John Doe #2 is still a member of and employed by the NYPD. At all times relevant herein, he was acting within the scope of his employment and under color of law.

11. Officer John Doe #3, was at all times relevant herein, a member of and employed by the NYPD. Upon information and belief, at all times relevant herein, he

was assigned to a unit of the New York City Police Department.

12. Upon information and belief, Officer John Doe #3 is still a member of and employed by the NYPD. At all times relevant herein, he was acting within the scope of his employment and under color of law.

13. Upon information and belief, at all times during the acts complained of herein, all parties were directed and supervised by officers of higher rank. Said officers of higher rank were also acting within the scope of their employment and under color of law. Said officers of higher rank were also subject to a lack of proper training and supervision by the NYPD. Defendant City of New York is alleged to be aware of the pattern of the unconstitutional nature of such acts, and chooses to ignore such behavior and fail to discipline it's supervisory employees for such acts.

14. Defendant City of New York is a municipal corporation organized pursuant to the laws of the State of New York. It has all the powers vested in it by the laws of the State of New York, the City of New York and the Charter of the City of New York. At all times relevant herein, it was employer of defendants John Doe#1 and John Doe#2 and John Doe#3.

15. On January 16th 2013, Harold Spencer served his notice of claim for this January 9th 2013 cause of action.

FACTS UNDERLYING THE CAUSE OF ACTION

16. On the afternoon of Janaury 9th 2012, John Doe#1 and John Doe#2 and John Doe#3 and other members of the NYPD entered the home of the Plaintiff, located at 293 Halsey Street, Brooklyn NY. At the time they did so, they acted without a lawful basis to do so. They did not possess a search warrant, nor were there exigent circumstances that would permit such entry. While inside Plaintiff's home, the defendant's enacted a systematic violation of his right to privacy and the destruction of his property without due process of law. Plaintiff's furniture and personal possessions were broken for no legitimate purpose. Defendant's also removed Plaintiff's personal property from the Plaintiff's home without any lawful right to do so.

FIRST CLAIM FOR RELIEF

(Defendants The City of New York, John Doe #1 and John Doe#2 and John Doe #3 unlawfully entered the Plaintiff's home)

17. Plaintiff repeats and realleges the allegations

contained in paragraphs 1 through 16, as if fully set forth herein.

18. On January 9th 2012, The City of New York, John Doe #1 and John Doe#2 and John Doe #3 unlawfully entered and caused to be entered the home of the Plaintiff. They did so without any legal authority to so act.

19. As Harold Spencer's behavior provided no justification for their conduct, the defendants' actions were unlawful within the meaning of the 4th and 14th Fourteenth Amendments to the United States Constitution.

20. As a result of defendants' conduct, Harold Spencer suffered financial, emotional and psychological injury, and continues to suffer psychological injury.

SECOND CLAIM FOR RELIEF

The City of New York, John Doe #1 and John Doe#2 and John Doe #3 destruction of property)

21. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 16, as if fully set forth herein.

22. On January 9th 2012, while inside the Plaintiff's home at 293 Halsey Street, Brooklyn NY, The City of New York, John Doe#1 and John Doe#2 and John Doe#3 willfully

and intentionally destroyed private property belonging to Harold Spencer without due process of law. Said property includes but is not limited to furniture and personal items.

23. There was no representative of the Plaintiff that was present in the home at the time preventing the unlawful search.

24. Upon information and belief, the individual defendant's were acting with the consent and supervision of Defendant New York City Police Department and City of New York.

Upon information and belief Supervisory personnel were present during these actions and directed and approved the acts of the individual defendant's

25. The destruction of the Plaintiff's property constitutes a taking thereof by the Government. Said taking was done without any due process, and therefore violates the United States Constitution.

THIRD CLAIM FOR RELIEF

The City of New York, John Doe#1 and John Doe#2 and John Doe#3 Taking of Property)

26. Plaintiff repeats and realleges the allegations

contained in paragraphs 1 through 16, as if fully set forth herein.

27. On January 9th 2012, while inside the Plaintiff's home at 293 Halsey Street, Brooklyn NY, The City of New York, John Doe #1 and John Doe#2 and John Doe willfully and intentionally remove private property belonging to Harold Spencer without due process of law. Said property includes but was not limited to a Digital Video Recorder.

None of the property removed was contraband or unlawful in any way.

28. There was no representative of the Plaintiff that was present in the home at the time preventing the unlawful search.

29. Upon information and belief, the individual defendant's were acting with the consent and supervision of Defendant New York City Police Department and City of New York.

30. Upon information and belief Supervisory personnel were present during these actions and directed and approved the acts of the individual defendant's

31. The removal of the Plaintiff's property

constitutes a taking thereof by the Government. Said taking was done without any due process, and therefore violates the United States Constitution.

32. As such, the conduct of The City of New York, John Doe #1 and John Doe#2 and John Doe #3 violated Harold Spencer rights protected by the United States Constitution.

33. Because of actions of The City of New York, John Doe #1 and John Doe#2 and John Doe #3, Harold Spencer suffered and continues to suffer pecuniary, emotional and psychological injuries.

PRAYER FOR RELIEF

WHEREFORE, Harold Spencer prays for the following relief:

- (a) compensatory damages in an amount to be determined at trial;
- (b) punitive damages in an amount to be determined at trial;
- (c) reasonable attorneys' fees;
- (d) costs and expenses; and

(e) such other and further relief as is just and proper.

March 31st 2014
New York, New York

Laurence L. Rothstein
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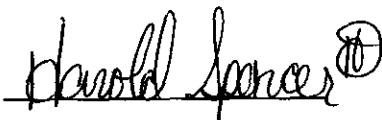
By:


Laurence Rothstein

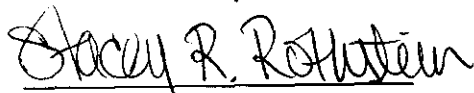
VERIFICATION

STATE OF NEW YORK)
 :ss.:
COUNTY OF)

Harold Spencer, being duly sworn, deposes and say that: I the plaintiff in this proceeding; that I have read the foregoing complaint and know the contents thereof; that the same is true of my own knowledge; except as to matters therein stated to be alleged on information and belief; and that to those matters I believe them to be true; the material allegations are within my personal knowledge.



Sworn to before me on the
1st day of April, 2014


Notary Public

STACEY R. ROTHSTEIN
Notary Public, State of New York
No. 01DR4989028
Qualified in New York County
Commission Expires 03/01/20 18

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Defendant's

- - - - -X

Summons and complaint

LAURENCE L. ROTHSTEIN
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